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Kari Alitalo

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MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 SEARS TOWER
CHICAGO, IL 60606-6357

EXAMINER

HUYNH, PHUONG N

ART UNIT

PAPER NUMBER

1644

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/046,922 | Applicant(s) ALITALO ET AL. | |
| | Examiner PHUONG HUYNH | Art Unit 1644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/9/09; 9/22/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,12,13,24-33,35,36,38 and 75-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12 is/are rejected.
- 7) ☒ Claim(s) 1,2,13,24-33,35,36,38 and 75-85 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-2, 12-13, 24-33, 35-36, 38 and 75-85 are pending.
2. Applicant's election of without traverse of species (a) SEQ ID NO: 35 and (b) an antibody or fragment thereof (recited in claim 32) in the reply filed on February 9, 2009 is acknowledged.

Because the elected species of SEQ ID NO: 35 is free of prior art, the species has been extended to include SEQ ID NO: 36-66.
3. The enablement rejection of claims 1-4, 12-13, 21-33, 35-36, 38 and 75-77 under 35 U.S.C. 112, first paragraph, has been obviated in view of the claims amendment filed September 22, 2008 and February 9, 2009.
4. The written description rejection of claims 1-4, 12-13, 21-33, 35-36, 38 and 75-77 under 35 U.S.C. 112, first paragraph, has been obviated in view of the claims amendment filed September 22, 2008 and February 9, 2009.
5. The rejection of claims 1 and 4 under 35 U.S.C. 102(e) as being anticipated by US 20020048763 A1 application (filed May 23, 2001 and claimed priority to provisional application 60/180,312 filed Feb 4, 2000; PTO 892) has been obviated in view of the claims amendment filed September 22, 2008 and February 9, 2009.
6. The following new grounds of objections and rejection are necessitated by the amendment filed September 22, 2008 and February 9, 2009.
7. Claim 1 is objected to because an isolated peptide *with* an amino acid sequence consisting of 8-40 amino acids *and ...* is improper. It is suggested that claim 1 be amended to recite "An isolated peptide consisting of 6 to 40 amino acids in length wherein the peptide comprising the amino acid sequence set forth in any one of SEQ ID NO: 35-66 and binds to human Vascular Endothelial Growth Factor Receptor-3 (VEGFR-3).

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8. Claims 24, 26, 27, 30, 32, 33, 35, 38 and 76 are objected to for being improper form because said claims should dependent from claims that precede claims 24, 26, 27, 30, 32, 33, 35, 38 and 76.
9. Claim 76 is further objected to because "in length" is missing at the end of "8-25 amino acids".
10. Claim 77 is objected to because "in length" is missing at the end of "10-25 amino acids".
11. Claim 78 is objected to because an isolated peptide *with* an amino acid sequence consisting of 8-40 amino acids *and ...* is improper. It is suggested that claim 78 be amended to recite "An isolated peptide consisting of 8 to 40 amino acids in length wherein the peptide comprising the amino acid sequence set forth in SEQ ID NO: 34 and binds to human Vascular Endothelial Growth Factor Receptor-3 (VEGFR-3).
12. Claim 80 is objected to because "in length" is missing at the end of "8-35 amino acids".
13. Claim 81 is objected to because "in length" is missing at the end of "10-30 amino acids".
14. Claim 82 is objected to because an isolated peptide *with* an amino acid sequence consisting of 8-40 amino acids *and ...* is improper. It is suggested that claim 82 be amended to recite "An isolated peptide consisting of 8 to 40 amino acids in length wherein the peptide comprising the amino acid sequence spanning amino acid residue 2 through amino acid residue 9 of any one of SEQ ID NO: 35 and 55-58, and wherein the peptide binds to human Vascular Endothelial Growth Factor Receptor-3 (VEGFR-3).
15. Claim 84 is objected to because "in length" is missing at the end of "8-35 amino acids". It is suggested that claim 84 be amended to recite "The isolated peptide of claim 82 wherein the peptide consisting of 8-35 amino acids in length."
16. Claim 85 is objected to because "in length" is missing at the end of "10-30 amino acids". It is suggested that claim 85 be amended to recite "The isolated peptide of claim 82 wherein the peptide consisting of 10-30 amino acids in length."

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17. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

18. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 has no antecedent basis in base claim 1 because the peptide of SEQ ID NO: 48 through SEQ ID NO: 53 are seven amino acids in length while SEQ ID NO: 54 is 6 amino acids in length. Claim 1 requires that the isolated peptide with an amino acid sequence consisting of 8-40 amino acids in length. It is suggested that claim 1 be amended to recite "An isolated peptide consisting of 6 to 40 amino acids in length wherein the peptide comprising the amino acid sequence set forth in any one of SEQ ID NO: 35-66 and binds to human Vascular Endothelial Growth Factor Receptor-3 (VEGFR-3).

19. Claims 2, 12-13, 25, 28, 29, 31, 36, 75, 79 and 83 are objected to as being dependent upon an objected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. No claim is allowed.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh, Ph.D. whose telephone number is (571) 272-0846. The examiner can normally be reached Monday through Thursday from 9:00 a.m. to 6:30 p.m. and alternate Friday from 9:00 a.m. to 5:30 p.m. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The IFW official Fax number is (571) 273-8300.
23. Any information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Phuong Huynh/

Primary Examiner, Art Unit 1644

April 24, 2009